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No. 07-

IN THE

Supreme Court of the United States

PERFECT 10, Inc., a California corporation,

Petitioner,

v.

CC BILL LLC.; CAVECREEK WHOLESALE INTERNET EXCHANGE, d/b/a CWIE, LLC,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 230 of the Communications Decency Act provides immunity to interactive computer services for certain tort-based causes of action, but it bars courts from construing the immunity so as to "limit or expand any law pertaining to intellectual property." 47 U.S.C. § 230(e)(2). Did the Ninth Circuit err in reading "any law" to mean only "any *Federal* law," in conflict with a decision of the First Circuit and statutory construction rules of this Court? The effect of this ruling is to grant defendants immunity, under Federal law, from state law intellectual property claims, contrary to the language employed by Congress.

CORPORATE DISCLOSURE STATEMENT

Petitioner Perfect 10, Inc. ("Perfect 10") has no parent, and no publicly held corporation owns 10% or more of Perfect 10's stock.

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OPINION BELOW

The initial opinion of the United States Court of Appeals for the Ninth Circuit is reported at *Perfect 10, Inc. v. CCBill LLC*, 481 F.3d 751 (9th Cir. 2007). The opinion was amended on May 31, 2007, at 488 F.3d 1102; the amended opinion is reprinted as Appendix A. The Ninth Circuit affirmed in part and reversed in part the decision of the United States District Court for the Central District of California rendered on June 22, 2004, and reported at 340 F.Supp.2d 1077 (C.D. Cal. 2004). The district court's opinion is reprinted as Appendix B. The court of appeals' order which amended its initial opinion and denied rehearing and rehearing en banc is reprinted as Appendix C.

STATEMENT OF JURISDICTION

The judgment of the Ninth Circuit was entered on March 29, 2007. The Order Amending Opinion, Amended Opinion, and Order Denying Rehearing and Rehearing En Banc were filed on May 31, 2007. Respondents' petition for rehearing and rehearing en banc was denied on June 12, 2007.

This Court has jurisdiction to review this judgment on a writ of certiorari under 28 U.S.C. § 1254(1).

The District Court had jurisdiction of the copyright claims under 28 U.S.C. §§ 1331 and 1338(a) and (b), and supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

STATUTORY PROVISION INVOLVED

Section 230 of the Communications Decency Act, 47 U.S.C. § 230

§ 230(c) Protection for "good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

* * * * *

§ 230(e) Effect on other laws

* * * * *

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

Title 47 U.S.C. § 230 is reproduced in Appendix D.

STATEMENT OF THE CASE

For nearly ten years, Petitioner Perfect 10, Inc. ("Perfect 10") published a magazine and ran a subscription website doing business under the trademark "PERFECT 10." Just recently, however, due to rampant Internet theft of its intellectual property, Perfect 10 was forced to close its magazine and lay off half of its staff. Perfect 10 has made a multi-million dollar investment to create what is the bread and butter of its business—thousands of very high quality photographs of Perfect 10 models, which have been described by one district court as "professional, skillful and sometime[s] [of] tasteful artistry." *Perfect 10 v. Google, Inc.*, 416 F.Supp.2d 828, 849 n. 15 (C.D. Cal. 2006). Perfect 10 has registered its trademark and its copyrights in its photographic works. ER59-142, 300-301¶¶10-11.[1] In addition, many Perfect 10 models, in an attempt to end the massive unauthorized use of their names and images on the Internet and for compensation, have assigned their rights of publicity to Perfect 10. *See, e.g.*, ER301¶11, ER358-369.

Respondents CCBill and CWIE are two distinct companies, but they share common ownership and many of the same officers. ER356, 1720, 216, 218-220, 224, 258-259. CCBill provides credit card transaction processing and related business services for its affiliated websites, many of which are adult websites. ER216, 260. When customers purchase memberships for CCBill affiliated websites, they are, in fact, buying that membership directly from CCBill and the customers' credit cards reflect a purchase from CCBill. ER301¶¶12-13, ER371. CCBill describes itself as the "Authorized Sales Agent" for its affiliated websites.

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[1] ER refers to the Excerpts of Record in the court of appeals.

ER302¶17, ER373-374. For each membership sold by CCBill, CCBill keeps a "transaction fee" of approximately 14.5% of the amount charged to the customer's credit card for that membership. ER302¶15, ER372.

CWIE hosts websites for a monthly charge. As a host, CWIE stores web files on its servers and makes its clients' websites available on the Internet for viewing by the public. ER212-214.

Both CCBill and CWIE have provided services to, and collected fees from, hundreds of pirate websites that display and sell access to photographs stolen from Perfect 10's magazine and website. ER353¶221;ER421-559. Some of these websites display nude celebrity fakes, superimposing the face of a celebrity onto the body of a Perfect 10 model, without authorization from either the celebrity or Perfect 10. ER580-699. Most of these websites steal not only Perfect 10 images, but also countless other extremely valuable images of supermodels and actresses. Many advertise extremely explicit images of celebrities that cannot possibly be authorized. ER321-22¶¶70-73; ER1246-48. CCBill facilitates and profits from the sale of more than 5.4 million celebrity images from such pirate websites. ER322¶¶74-75; ER1260-1303; ER1305-06. Hundreds more pirate websites use the names of Perfect 10 models without authorization to drive traffic to their websites, often times without actually showing images of those models. Given the practical impossibility of filing hundreds of lawsuits against such thieving websites, many in foreign countries, Perfect 10 brought this action in the United States District Court for the Central District of California against CCBill/CWIE for, *inter alia*, contributory and vicarious copyright infringement, trademark infringement, and violations of state laws

pertaining to rights of publicity, unauthorized use of a registered mark, unfair competition, and false advertising.

CCBill/CWIE moved for summary judgment. They argued that Perfect 10's claims for violation of rights of publicity, state trademark infringemer , unfair competition, and false advertising were immunized by federal law, Section 230(c)(1) of the Communications Decency Act (CDA), 47 U.S.C. § 230(c)(1), which states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Perfect 10 responded that the claims were not immunized, because they fell within one of the CDA's exceptions to immunity, Section 230(e)(2), which provides, "Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property."

The District Court denied CCBill/CWIE's motion as to the claims for violation of rights of publicity and state trademark infringement, holding that state right of publicity and trademark claims are not immunized, because they arise under "law[s] pertaining to intellectual property," and thus fall within the exception for immunity in Section 230(e)(2). 340 F.Supp.2d at 1106-10 (Appendix B, pp. 92a-97a).

The court of appeals reversed the district court in this respect, holding that Petitioner's right of publicity and state trademark claims were immunized by Section 230(c)(1), despite the exception to immunity provided by Section 230(e)(2). The court of appeals did not dispute that the claims arose under "law[s] pertaining to intellectual property," but it held that the exception should be read to include only ***federal*** laws pertaining to intellectual property. "In the absence of a definition from Congress, we construe the term

'intellectual property' to mean 'federal intellectual property.'" 481 F.3d at 768, repeated at 488 F.3d at 1119 (Appendix A, p. 27a).

After the case had been argued and submitted, the United States Court of Appeals for the First Circuit issued its decision in *Universal Communication Systems, Inc. v. Lycos, Inc.*, 478 F.3d 413 (1st Cir. 2007), holding that a claim arising under a Florida ***state*** trademark law falls within the intellectual property exception to CDA immunity set forth in Section 230(e)(2). Perfect 10 filed a Petition for Rehearing and Rehearing En Banc, pointing out the conflict with the First Circuit. On May 31, 2007, the Ninth Circuit denied rehearing and issued an Amended Opinion, 488 F.3d 1102, in which it attempted to explain the conflict as follows:

> But neither party in [*Universal Communication Systems*] raised the question of whether state law counts as "intellectual property" for purposes of § 230 and the court seems to simply have assumed that it does. We thus create no conflict with *Universal Communication*.

488 F.3d at 1119, fn. 5 (Appendix A, p. 27a, fn. 5).

REASONS FOR GRANTING THE PETITION

As discussed below, the Ninth Circuit was incorrect in stating in its amended opinion that there was not a conflict with the First Circuit. The issue of whether a state intellectual property law falls within the meaning of Section 230(e)(2) was clearly presented and decided by the First Circuit. But more importantly, the Ninth Circuit's "explanation" does nothing to diffuse the very real and very substantial conflict

between the two circuits. The First Circuit has interpreted the "any law" language of Section 230(e)(2) to mean just that—any law, state or federal, pertaining to intellectual property. In direct contrast, the Ninth Circuit has interpreted the same language much more narrowly, construing Section 230(e)(2)'s reference to "any law" to mean only "any ***federal*** law." The Ninth Circuit's reading of the statute unduly constricts the meaning of Section 230(e)(2) in a way that Congress did not intend, and which will sharply erode the ability of those in the entertainment industry to seek meaningful legal recourse for the violation of their valuable publicity rights. The Ninth Circuit's interpretation is without support, and it is further contradicted by district court cases which are in accord with the First Circuit and directly conflict with the Ninth Circuit's holding.

Furthermore, the Ninth Circuit's reading of the statute conflicts with long-standing decisions of the Supreme Court regarding statutory construction. The immunity provided by Section 230(c)(1) has exceptions for: (1) any "Federal criminal statute" and (2) "any law pertaining to intellectual property." These two exceptions are contained in the same subsection of the statute, Section 230(e), right next to each other. Despite the fact that ***Congress included the word "federal" in the first exception but not the second***, the Ninth Circuit inserted the word "federal" into the second exception as well. 488 F.3d at 1119 (Appendix A, p. 27a). This is directly contrary to rules of statutory construction promulgated by this Court in *Duncan v. Walker*, 533 U.S. 167, 172 (2001); *Fedorenko v. United States*, 449 U.S. 490, 513 (1981); *F.T.C. v. Sun Oil Co.*, 371 U.S. 505, 514-515 (1963); and other cases.

In summary, this Court should grant the petition, for the following reasons:

1. This case presents an important issue of federal law with significant practical consequences, expanding federal immunity to cover state intellectual property claims, despite clear language in the statute to the contrary.

2. The Ninth Circuit's decision conflicts with a decision of the First Circuit on this important issue of federal law.

3. The Ninth Circuit's decision conflicts with rulings of this Court regarding statutory construction.

I. THE COURT OF APPEALS ERRONEOUSLY BROADENED THE IMMUNITY THAT CONGRESS ENACTED, BY STRIKING "ANY LAW" AND EFFECTIVELY AMENDING THE STATUTE TO READ "ANY FEDERAL LAW."

This case presents important issues affecting the ability of those in the entertainment industry to seek meaningful legal recourse for violations of intellectual property rights secured by state law. The Ninth Circuit has significantly expanded the immunity of those accused of contributing to Internet piracy, by doing what Congress explicitly admonished courts not to do: It limited the reach of state intellectual property laws.

When Congress enacted the Communications Decency Act in 1997, which gave immunity to interactive computer

services[2] against certain causes of action like defamation, it was careful to not grant immunity for intellectual property violations. Specifically, Congress provided that the immunity granted will have "No effect on intellectual property laws," warning courts that "[n]othing in this section [230] shall be construed to limit or expand any law pertaining to intellectual property." 47 U.S.C. § 230(e)(2) (Appendix D, p. 115a).

The Ninth Circuit has now held that when Congress said "any law," it did not mean "any law." Instead, it meant only "any ***federal*** law." It meant, in other words, any law *except* any law in any of the fifty states. The court of appeals cited no legislative history or other evidence to support its reading, for none exists. Nor did the court find support in any other court's reading of Section 230, because no other court has reached this result and in fact all other courts to have addressed this issue, including the district court below, have reached the opposite result.

The outcome is that at least two of Petitioner's causes of action (and those of countless future plaintiffs) under California's intellectual property laws – for infringement of the right of publicity and wrongful use of a registered mark – are barred under Section 230. Under the Ninth Circuit's ruling, interactive computer services are now immunized under federal law from state law intellectual property claims. 488 F.3d at 1119 (Appendix A, pp. 27a-28a).

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[2] The CDA defines an interactive computer service as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet . . . ." 47 U.S.C. § 230(f)(2).

II. THE DECISION BELOW CONFLICTS WITH THE DECISION OF THE FIRST CIRCUIT AND OTHER COURTS HOLDING THAT CAUSES OF ACTION ARISING UNDER STATE INTELLECTUAL PROPERTY LAWS ARE *NOT* BARRED BY SECTION 230.

As noted above, while the decision below was pending in the Ninth Circuit, the First Circuit issued its decision in *Universal Communication Systems, Inc. v. Lycos, Inc.*, 478 F.3d 413 (1st Cir. 2007). The First Circuit refused to grant Section 230 immunity for plaintiff's state-law trademark dilution claim, stating that "[c]laims based on intellectual property laws are not subject to Section 230 immunity," and that "the plain language of Section 230(e)(2) precludes [the defendant's] claim of immunity from a claim for trademark infringement." *Universal Communication, supra*, 478 F.3d at 422-23 (internal quotations omitted).

After Perfect 10 notified the Ninth Circuit of this decision in its petition for rehearing, the court amended its decision to address the point. It stated: "[N]either party in [*Universal Communication Systems*] raised the question of whether state law counts as 'intellectual property' for purposes of § 230 and the court seems to simply have assumed that it does. We thus create no conflict with *Universal Communication*." 488 F.3d at 1119, fn. 5 (Appendix A, p. 27a, fn. 5).

This is simply incorrect. First, as noted by the First Circuit, the defendant in that case, Lycos, did argue that the state-law trademark claim was immunized by Section 230(c)(1):

> Lycos filed a motion to dismiss, arguing that UCS's claims were barred under Section 230 of

> the Communications Decency Act, 47 U.S.C. § 230. . . . Section 230 provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider," *id.* § 230(c)(1), and that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."

478 F.3d at 416. Accordingly, the issue was clearly presented. But more importantly, conflicts are created by judicial rulings, not litigants' arguments. The First Circuit clearly held that a Florida state trademark law falls within the intellectual property exception to Section 230(c)(1) immunity set forth in Section 230(e)(2). The First Circuit stated:

> UCS's remaining claim against Lycos was brought under ***Florida trademark law***, alleging dilution of the "UCSY" trade name under Fla. Stat. §495.151. ***Claims based on intellectual property laws are not subject to Section 230 immunity.*** *See* 47 U.S.C. § 230(e)(2) ("Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property."); *see also Gucci Am., Inc. v. Hall & Assocs.*, 135 F.Supp.2d 409, 413 (S.D.N.Y.2001) (finding that the "plain language of Section 230(e)(2) precludes [the defendant's] claim of immunity" from a claim for

> trademark infringement). . . . Section 230 immunity does not apply . . . .

Universal Communication, supra, 478 F.3d at 422-23 (emphasis added).[3]

By adhering to its holding even in the face of an acknowledged ruling to the contrary by the First Circuit, the Ninth Circuit has created a conflict among the circuits on an important point of federal law.

Additionally, as noted above, district courts have reached directly conflicting results with the Ninth Circuit. *Gucci Am., Inc. v. Hall & Assocs.*, 135 F.Supp.2d 409, 412-13 (S.D.N.Y. 2001) held that state law claims for trademark infringement and unfair competition were not immunized under Section 230. The court stated, "**The plain language of Section 230(e)(2) precludes [defendant's] claim of immunity.**" (emphasis in original). *Voicenet Communications, Inc. v. Corbett*, 2006 WL 2506318 at *4 (E.D. Pa. 2006), compared the use of the word "Federal" in Section 230(e)(1) with lack of that term and use of the term "any" in Section 230(e)(2), indicating that Section 230(e)(2) applies to state intellectual property laws. "When Congress includes particular language in one provision of a statute but omits it in another, courts generally presume that Congress acted intentionally and purposefully." Every court which has decided this issue (including the District Court for the Central District of California in the present case) has decided it contrary to the Ninth Circuit.

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[3] After ruling that the state trademark-dilution claim was not immunized, the First Circuit upheld dismissal of the claim on other grounds. 478 F.3d at 425.

III. THE COURT OF APPEALS DISREGARDED WELL-SETTLED PRINCIPLES OF STATUTORY CONSTRUCTION PROPOUNDED BY THIS COURT, TO NARROW THE EXCEPTION CONGRESS HAD PROVIDED, AND THUS EXPAND THE IMMUNITY OF ACCUSED INFRINGERS.

Moreover, even from the standpoint of statutory construction, it is clear that the proper reading of Section 230(e)(2) is the one followed by the First Circuit, not the court of appeals here. It is axiomatic that a court's task "is to construe what Congress has enacted" and to "begin, as always, with the language of the statute." *Duncan v. Walker*, 533 U.S. 167, 172 (2001). The language of the statute makes it obvious that Congress did *not* insert the word "federal" in the phrase "any law pertaining to intellectual property."

In contrast, Congress *did* insert the word "federal" in Section 230(e)(1), immediately adjacent. There, Congress provided that Section 230 was not to be construed to impair the enforcement of any "*Federal* criminal statute." 47 U.S.C. § 230(e)(1) (emphasis added).

This Court stated in *Duncan v. Walker, supra* at 172: "[H]ad Congress intended to include federal habeas petitions within the scope of [the Antiterrorism and Effective Death Penalty Act], Congress would have mentioned 'Federal' review expressly. In several other portions of AEDPA, Congress specifically used both the words 'State' and 'Federal' to denote state and federal proceedings."

The same is true here. Had Congress meant to include *only* federal intellectual-property laws within the immunity

provisions of Section 230, it would have mentioned 'federal' law expressly. In an adjacent provision of the same section, Congress specifically used the word 'federal' to denote federal proceedings. 47 U.S.C. § 230(e)(1).

One of the clearest tenets of statutory construction is that a term employed by Congress in one place, and excluded in another, should not be implied where it is excluded. As this Court stated in *Fedorenko v. United States*, 449 U.S. 490, 512-13 (1981):

> That Congress was perfectly capable of adopting a "voluntariness" limitation where it felt that one was necessary is plain from comparing § 2(a) with § 2(b), which excludes only those individuals who "*voluntarily* assisted the enemy forces . . . in their operations. . . ." Under traditional principles of statutory construction, the deliberate omission of the word "voluntary" from § 2(a) compels the conclusion that the statute made *all* those who assisted in the persecution of civilians ineligible for visas. [citations omitted.] As this Court has previously stated: "We are not at liberty to imply a condition which is opposed to the explicit terms of the statute. . . . To [so] hold . . . is not to construe the Act but to amend it." [Emphasis in original.]

See also F.T.C. v. Sun Oil Co., supra, 371 U.S. at 514-15 ("There is no reason appearing on the face of the statute to assume that Congress intended to invoke by omission in § 2(b) the same broad meaning of competition or competitor which it explicitly provided by inclusion in § 2(a); the reasonable inference is quite the contrary."); *Securities*

Industry Ass'n v. Board of Governors of Federal Reserve System, 716 F.2d 92, 96 (2d Cir. 1983), *aff'd*, 468 U.S. 207 (1984) ("Congress' use in §16 of language that specifically refers to brokerage, and its omission of similar terms from § 20, suggests that Congress did not intend § 20 to cover brokerage. . . . [T]erms carefully employed by Congress in one place, and excluded in another, should not be implied where excluded."). *See also Voicenet Communications, Inc. v. Corbett*, *supra* at *4, comparing the use of the word "Federal" in Section 230(e)(1) with lack of that term and use of the term "any" in Section 230(e)(2).

As this Court warned in *Duncan v. Walker*, *supra*, "It is well settled that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." 533 U.S. at 173, quoting *Bates v. United States*, 522 U.S. 23, 29-30 (1997) and *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotation marks omitted). Here, as in *Duncan*, "We find no likely explanation for Congress' omission of the word 'Federal' in [the statute] other than that Congress did not intend" to put it there. 533 U.S. at 173.

Under traditional principles of statutory construction, therefore, the omission of the word "federal" from Section 230(e)(2) – and its insertion in the immediately preceding subsection – compels the conclusion that in stating "any law pertaining to intellectual property," Congress meant just that – i.e., any law, not just any federal law.[4]

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[4] There is no dispute that Perfect 10's claims for infringement of rights of publicity and wrongful use of a registered mark arise (Cont'd)

IV. THE DECISION BELOW PRESENTS IMPORTANT ISSUES REGARDING THE SCOPE OF FEDERAL IMMUNITY, DETERMINING THE ENFORCEABILITY OF STATE LAWS AGAINST THOSE ACCUSED OF INFRINGEMENT OF INTELLECTUAL PROPERTY.

Although no reasoning on the part of a court can justify its alteration of a statute enacted by Congress, the reasoning the court of appeals employed here is particularly inappropriate. It noted that state laws protecting intellectual property are "by no means uniform," and so state laws should not "dictate the contours of this federal immunity."

(Cont'd)

under California's "law[s] pertaining to intellectual property." The district court discussed the point, 340 F.Supp.2d at 1107-1110 (Appendix B, pp. 96a-97a), and held that they do. The court of appeals did not disturb that holding. The district court granted Respondents' motion for summary judgment as to the claims for unfair competition and false advertising, holding that such claims did not arise under intellectual property laws. However, such claims do in fact arise under laws pertaining to intellectual property, as they are both based on, among other things, rights of publicity violations. For example, in its unfair competition claim, Perfect 10 alleged that Respondents gained an unfair competitive advantage by aiding and abetting third-party websites that were engaged in the violation of the publicity rights of both Perfect 10 and third-parties. *See Gucci, supra*, 135 F.Supp.2d at 411-415 (S.D.N.Y. 2001), which held that both state law trademark infringement and *unfair competition claims* were intellectual property claims that fall within the intellectual property exception of Section 230(e)(2). Perfect 10's false advertising claim also arose under laws pertaining to intellectual property, as it was based on Respondents aiding and abetting third-party websites that were engaged in false advertising, including by misappropriating the publicity rights of Perfect 10 to lure traffic to their websites, when in some instances, such sites did not even have the promised purloined images.

488 F.3d at 1118 (Appendix A, pp. 26a-27a). Whatever the merits of this argument – and there are reasoned arguments to the contrary – Congress did not adopt it. In Section 230(e), "any law" does not mean "any law except the laws of all states."[5]

Apart from the split between the First and Ninth Circuits, and apart from the Ninth Circuit's expansion of the immunity that Congress had enacted, there are practical reasons why the ruling below should be reviewed. If it is not, a statute that was designed to reduce pornography on the Internet will, instead, perversely result in a marked increase in pornography. (*See, e.g.*, ER1247, ER320-21¶¶68-69, ER1288, ER322¶74.) This pornography is distributed by judgment-proof infringers who could not exist without intermediaries like CCBill. However, CCBill's activities will be immunized from state intellectual property laws. It is simply not possible for celebrities and other rights holders to sue thousands of infringers worldwide. Instead, the only economically viable way to stop such rampant rights violations is to proceed against those entities that facilitate and profit from the theft. Despite the explicit statutory language stating that no laws regarding intellectual property should be affected, the Ninth Circuit's ruling, reversing the

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[5] The court of appeals' concern with the non-uniformity of state laws was not shared by Congress, which also provided exceptions to immunity for "any State law that is consistent with this section" and the Electronic Communications Privacy Act "or any similar State law." Sections 230(e)(3) and (4). *See also Zeran v. America Online, Inc.*, 958 F.Supp. 1124, 1131 (E.D.Va. 1997), *aff'd.*, 129 F.3d 327 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998) ("[T]he CDA reflects no congressional intent, express or implied, to preempt all state law causes of action concerning interactive computer services.")

district court on this point, will deprive Petitioner and others of legitimate state-law intellectual property rights.

This Court has recognized a "presumption against the pre-emption" of state law "because the States are independent sovereigns in our federal system." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). "[W]e have long presumed that Congress does not cavalierly pre-empt state-law causes of action." *Id.* Similarly, federal courts should not impose immunity for violation of state laws unless there is a clear Congressional direction to do so. There is no clear Congressional direction to immunize violations of state intellectual property laws; in fact, Congress has expressly mandated the contrary.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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